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Supreme Court, U. S.
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IN THE

Supreme Court Of The United States

OCTOBER TERM 1972

KEARNEY D. SPEARS,
Petitioner,
-vs-
GLENN L. HOUGH,
Respondent.

No. 72-107

On Petition for Writ of Certiorari
to the United States Court of
Appeals for the Eighth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS IN COURTS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported in 458 F.2d 529.

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was entered on April 21, 1972. A petition for rehearing was not made. The petition for a writ of certiorari herein was not docketed in the Supreme Court until July 21, 1972, more than 90 days after the entry of the judgment in the Eighth Circuit. The time for applying for the writ was not extended. Therefore, the petition is untimely, and this Court does not have jurisdiction to entertain it. 28 U.S.C. § 2101 (c).

QUESTION PRESENTED

The question presented is more accurately stated as follows:

Where a jury determined that a plaintiff seeking damages for personal injuries had not been damaged, which determination was upheld on motion for new trial and on appeal, should this factual determination be again reviewed?

STATEMENT OF THE CASE

Petitioner's statement of the case is substantially correct except with respect to the following inaccuracies and omissions.

The bleeding and bruising from the shotgun pellets was essentially quite minimal and was treated following the accident by the use of small circular band-aids which were applied at a hospital in Valentine, Nebraska, following which, plaintiff returned to the hunting area that day and continued hunting for the next three days. By the day following the accident, the swelling was nearly all gone, and the only visible effects from the accident were the small circular band-aids. The pellets which were lodged in plaintiff's face did not prove at all troublesome to him, and he has never sought to have them removed.

Although plaintiff claimed to be suffering from tearing and watering of the eyes as a result of this accident, the cause of this alleged condition was seriously disputed, and one of the plaintiff's own opthalmologists testified, "I am mystified as ever regarding the cause of his eye trouble." There were no medical expenses introduced in evidence which the jury, as reasonable men and women, should have concluded were caused by the accident in question. The minor expenses incurred immediately following the

accident at Valentine, Nebraska, were not introduced in evidence. The only expense which was introduced in evidence was a bill from a physician in Memphis, Tennessee, for the mystical condition from which plaintiff suffered and which the jury obviously concluded was not related to the accident. Moreover, although claim was made for loss of earnings and loss of earning capacity, the evidence established beyond dispute that plaintiff's income had more than doubled at the time of trial from what it was at the time of the accident. Thus, it is important to note that there were no undisputed causally related special damages established.

ARGUMENT

In an effort to set forth one of the reasons which this Court considers in passing upon a petition for a writ of certiorari, petitioner claims that an award of zero damages to a personal injury plaintiff so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. However, there is substantial federal precedent upholding such jury verdicts as not invalid or ambiguous nor necessitating a new trial in cases of this nature. *Joseph V. Rowlen,* 425 F.2d 1010 (7th Cir. 1970); *Wingerter v. Maryland Casualty Co.,* 313 F.2d 754 (5th Cir. 1963); *Wright v. Hoover,* 329 F.2d 72 (8th Cir. 1964); *St. Paul Fire & Marine Ins. Co. v. Arkla Chemical Corp.,* 435 F.2d 857 (8th Cir. 1971). Moreover, this Court had occasion to uphold a substantially identical verdict (for $1.00 rather than none) in the case of *Fairmont Glassworks v. Cub Fork Coal Co.,* 287 U.S. 474, 53 S.Ct. 252, 77 L.Ed. 439 (1933), where Mr. Justice Brandeis, speaking for the Court, said:

> "To regard the verdict as inconsistent on its face is to assume that the jury found for the plaintiff and failed to perform its task of assessing damages . . . Appellate courts should be slow to impute to juries a disregard of their duties, and to trial courts a want of diligence or perspicacity in appraising the jury's conduct." 287 U.S. at 484, 485.

In his petition, petitioner has made vague claims with respect to pain, suffering, subsequent medical ailments and medical bills sustained or suffered by petitioner as a result of the accident in question. However, the opinion of Judge Van Pelt in the Eighth Circuit Court of Appeals clearly and accurately sets forth the evidence developed in the trial court relating to the claimed injuries and damages. In essence, petitioner is simply asking for another review of the factual determinations made and upheld in the lower courts, as there has been no departure whatever from the accepted and usual course of judicial proceedings.

CONCLUSION

For the reasons stated above, respondent submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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